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The Different Faces of "Public Purpose": Shouldn't It Always Mean the Same Thing?

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THE DIFFERENT FACES OF “PUBLIC PURPOSE”: SHOULDN’T IT ALWAYS MEAN THE SAME THING?

MARTIN M. RANDALL*

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I. INTRODUCTION

Under Florida law the phrase “public purpose” carries with it several different meanings, and when used as a standard for determining the limits of governmental actions it offers differing levels of protection for the property and money of private individuals. This Note will examine significant decisions and underlying policy considerations in three areas of Florida law that rely heavily on a finding of a public purpose: (1) validation of revenue bonds, (2) ad valorem tax exemptions, and (3) eminent domain.

Several common threads bind these areas of law. First, in each context, the governmental actions and resultant legal actions have the potential of substantially impacting the property and wealth of any person residing in the State of Florida. Second, the law applicable to each has been, over time, substantially influenced by a judicial gloss on the constitutional provisions which form their foundations. Third, the introduction of a resultant benefit flowing to private entities raises challenges to the validity of the governmental action, in many cases; well-founded challenges. Finally, in all three contexts, the ability of a governmental unit to go forward with its contemplated course of action rests upon a judicial determination that the action will serve a public purpose to one degree or another.

The survey of the law undertaken in this Note will highlight the inconsistency and confusion that results from the Florida courts’ insistence on treating “public purpose” as something slightly different in each context. Perhaps the time has come to reconcile the judicial

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meaning of “public purpose” with the meaning understood and expected by the layperson reading his state’s constitution and that any of that document’s infirmities are the people’s to remedy, not the courts’ or the legislature’s.

II. REVENUE BOND ISSUES AND PUBLIC PURPOSE

According to the Florida Supreme Court, sun and sand are not enough to ensure the state’s prosperity.¹ Because this is so, communities have gone to great lengths to increase their attractiveness to tourists and industry.² Common methods have included the development of recreational facilities and attempts to lure or retain professional sports teams through the issuance of revenue bonds.³ The difficulty that arises in these cases is that a community pursuing such a venture is frequently not the sole beneficiary of the development. Oftentimes, as in the case of attracting a professional sports franchise, private parties receive significant benefits at the expense of a community’s taxpayers.⁴

A. *Paramount Public Purpose and Incidental Private Benefits*

In *Poe v. Hillsborough County*, the new owner of the Tampa Bay Buccaneers threatened relocation claiming that his team could not compete with other franchises in the league absent increased revenue generating options.⁵ These options, such as luxury suites and club seating, required the construction of a new stadium.⁶ Fearing the Buccaneers’ imminent departure, notwithstanding the fact that the owner had not applied to the league for relocation approval, the local government⁷ scrambled to reach an agreement for the construction of a new stadium and to devise a method of financing the stadium.⁸

1. *Poe v. Hillsborough County*, 695 So. 2d 672, 676 (Fla. 1997) (quoting *State v. Daytona Beach Racing & Recreational Dev. Facilities Dist.*, 89 So. 2d 34, 37 (Fla. 1956)).

2. *See id.*

3. *See generally id.* (football stadium); *see also Roper v. City of Clearwater*, 796 So. 2d 1159 (Fla. 2001) (Major League Baseball spring training facility); *State v. Osceola County*, 752 So. 2d 530 (Fla. 1999) (convention center); *Orange County Indus. Dev. Auth. v. State*, 427 So. 2d 174 (Fla. 1983) (television station); *State v. Osceola County Indus. Dev. Auth.*, 424 So. 2d 739 (Fla. 1982) (public lodging facility); *Daytona Beach Racing & Recreational Dev. Facilities Dist.*, 89 So. 2d 34 (motor speedway).

4. *See Poe*, 695 So. 2d at 674 (one-half cent sales surtax imposed to finance construction of community stadium made available to pro football team owner under very favorable terms).

5. *Id.* at 673.

6. *Id.*

7. Local government in this case included the cities of Tampa, Temple Terrace, and Plant City, Hillsborough County, and the Tampa Sports Authority. *See id.* at 674.

8. *Id.* at 673-74. In the space of less than one year, negotiations with the new owner began and ended, a thirty-year one-half cent infrastructure surtax was enacted, the voters

In the end, a one-half cent sales surtax was imposed on the residents of Hillsborough County through an ordinance and subsequent referendum approval.⁹ While much of the revenue generated from the surtax was to be devoted to schools and general municipal uses, the portion that was devoted to stadium construction was significant—\$318 million.¹⁰ As part of the thirty-year agreement with the owner of the Buccaneers, the Tampa Sports Authority (TSA) retained ownership of the stadium. Additionally, the TSA would receive \$3.5 million dollars in fees and \$1.93 million in ticket surcharges each year from the Buccaneers for a total of \$162 million.¹¹ The \$156 million gap between the cost of the stadium and the amount paid by the Buccaneers by itself may well have been enough to raise the ire of the forty-seven percent of Hillsborough County voters who voted against the surtax. However, the agreement provided another significant benefit for the Buccaneers. In addition to the revenues generated by the Buccaneers games, the agreement entitled the team to the first \$2 million generated from non-Buccaneers events held at the stadium.¹² Needless to say, the payment bore a striking resemblance to the payment of rent by the landlord, TSA, to the tenant, the Buccaneers, and represented the sole reason for the trial court's refusal to validate a bond issue with which the TSA and the City of Tampa sought to begin construction.¹³

Article VII, Section 10 of the Florida Constitution provides that "[n]either the state nor any county, school district, municipality, special district, or agency of any of them, shall . . . lend or use its taxing power or credit to aid any corporation, association, partnership or person."¹⁴ That section further provides that the state is not prohibited from issuing bonds to finance infrastructure projects such as airports or ports or industrial facilities.¹⁵ However, a literal reading

approved the surtax by referendum (53%), and a suit was filed challenging the validity of the arrangement. *Id.*

9. *Id.* at 674.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 675.

14. FLA. CONST. art. VII, § 10.

15. The complete text of section 10 provides:

Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:

(a) the investment of public trust funds;

(b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;

(c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or

of the language fails to reveal an exception where a municipality may issue revenue bonds to construct a sports stadium directly and substantially benefiting a private entity. Nevertheless, the law in Florida has long been that a bond issue is constitutional as long as the issuer “has the authority to issue [the] bonds; . . . the purpose of the obligation is legal; and . . . the bond issuance complies with the requirements of the law.”¹⁶ In the case of recreational facilities revenue bonds, a legal purpose has been defined as one where the project serves a “paramount public purpose.”¹⁷

The origin of the “public purpose doctrine,” as it relates to sports venues, finds its roots in *State v. Daytona Beach Racing & Recreational Development Facilities District*.¹⁸ In that case the court concluded that the issuance of bonds for the purpose of financing the construction of the Daytona Motor Speedway did not violate article IX, section 10 (article VII, section 10’s predecessor).¹⁹ In rejecting the constitutional challenge to the bond issue, the court stated:

Appellant’s final argument is that to lease the facility for a part of each year to a private corporation constitutes a violation of Section 10 of Article IX of the Constitution of Florida, F.S.A., which prohibits the loaning of the District’s credit to any corporation. It contends that the effect of the contemplated contract with the Corporation is to allow it to use the facility for part of each year for forty years with *no capital investment and consequently the credit of the District is loaned to the Corporation*. But we have heretofore held that if an undertaking is for public purposes, Article IX, § 10 of the Constitution is not violated even though some private parties may be incidentally benefited “The mere fact that some one engaged in private business for private gain will be benefited by every public improvement undertaken by the government or a gov-

refinance the cost of capital projects for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.

(d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

Id.

16. *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 249 (Fla. 2001) (Sebring IV) (quoting *State v. Osceola County*, 752 So. 2d 530, 533 (Fla. 1999); *Poe*, 695 So. 2d at 675.

17. *Poe*, 695 So. 2d at 675.

18. 89 So. 2d 34 (Fla. 1956).

19. *Id.* at 37 (interpreting FLA. CONST. of 1885, art. IX, §10 (amended in 1968 to become FLA. CONST. art. VII, § 10)).

ernmental agency, should not and does not deprive such improvement of its public character or detract from the fact that it primarily serves a public purpose. An incidental use or benefit which may be of some private benefit is not the proper test in determining whether or not the project is for a public purpose."²⁰

Over the years, the rule of the *Daytona Beach* case has been refined to hold that a "bond issue does not violate article VII, section 10 so long as the project serves a 'paramount public purpose,' and any benefits to private parties from the project are incidental."²¹ In *Poe*, the trial court stated that the construction would serve a paramount public purpose but found that the inclusion of the clause allocating non-Buccaneers event revenue to the team rendered the purpose of the project predominately private.²² The trial court suggested that the elimination of that clause would clear the way for validation.²³ The supreme court disagreed with the trial court's characterization of the purpose of the project.

Citing to testimony credited by the trial court regarding the economic benefits of the new stadium, the supreme court held that once it is determined that a paramount public purpose exists, "the court cannot micromanage the arms-length business negotiations of the parties by striking discrete portions of a complex arrangement which, as a whole, the court candidly finds to be substantially beneficial to the public."²⁴ TSA's expert witness concluded that the economic benefit to the community would far exceed the cost of the new stadium.²⁵ This supported the finding of a paramount public purpose. The supreme court did not disagree with the trial court's conclusion that the Buccaneers' owner "got 'too sweet' a deal."²⁶ Nevertheless, the court determined the trial court's finding of paramount public purpose was controlling and remanded the case with instructions to validate the bond issue.²⁷

The *Poe* decision raises two interesting questions. First, is it legitimate to force the financing of recreational and entertainment facilities within the scope of permissible acts under article VII, section 10 of the Florida Constitution? And second, what are the bounds of

20. *Id.* at 37-38 (emphasis added) (quoting *State v. Bd. of Control*, 66 So. 2d 209, 210 (Fla. 1953)).

21. *See Poe*, 695 So. 2d at 675 (citing *N. Palm Beach County Water Control Dist. v. State*, 604 So. 2d 440, 441-42 (Fla. 1992); *Wald v. Sarasota County Health Facilities Auth.*, 360 So. 2d 763 (Fla. 1978); *State v. Jacksonville Port Auth.*, 204 So. 2d 881 (Fla. 1967)).

22. *Poe*, 695 So. 2d at 675.

23. *Id.*

24. *Id.* at 679.

25. *Id.* at 678.

26. *Id.* at 678-79.

27. *Id.* at 679.

paramount public purpose? The *Poe* court, for the most part, left these questions unanswered.

B. The Expansive Construction of Article VII, Section 10

As noted above, article VII, section 10 of the Florida Constitution specifically provides that an arm of the state may lend its taxing power or credit for the benefit of private entities by issuing revenue bonds for the purpose of financing airports or port facilities.²⁸ Intuitively, this makes sense. Airports and ports are significant forms of infrastructure that offer immediate and substantial benefits to a community. Depending upon the size and geographic location of a community, development of these facilities may well be considered as important to local commerce and quality of life as police, fire protection, and a well maintained system of roads and streets. However, article VII, section 10 says nothing about football stadiums and motor speedways. Yet, Florida courts have interpreted this provision as including these types of projects within its exceptions.²⁹

In *Nohrr v. Brevard County Educational Facilities Authority*, the supreme court explained that the type of projects that may be financed under the exceptions to the article VII, section 10 proscriptions against private benefits were not limited to those enumerated.³⁰ In *Nohrr*, bonds were issued to finance the construction of a dormitory and cafeteria at a private university and the resulting debt was to be serviced from rents and other sources of revenue derived from the project itself.³¹ The court noted that public financing of projects resulting in benefits to private entities had been a source of dispute dating back to the adoption of article IX, section 10 of the Florida Constitution of 1885, the predecessor to article VII, section 10, which was adopted in 1968.³² The 1885 provision listed no exceptions to the pledging of credit by an arm of the state benefiting a private entity.³³ However, under the earlier provision, courts had held that the issuance of bonds to finance projects incidentally benefiting private parties did not amount to pledging the state's credit if the public was neither "directly [nor] contingently liable to pay something to somebody."³⁴ Over time, the paramount public purpose/incidental private

28. FLA. CONST. art. VII, § 10.

29. See, e.g., *Orange County Indus. Dev. Auth. v. State*, 427 So. 2d 174, 178 (Fla. 1983) ("This Court has recognized that the listing of particular authorized projects . . . was not intended to deny public revenue bond financing of other types of projects."); *Nohrr v. Brevard County Educ. Facilities Auth.*, 247 So. 2d 304 (Fla. 1971).

30. *Nohrr*, 247 So. 2d at 308-09.

31. *Id.* at 306.

32. *Id.* at 309.

33. *Id.*; see also FLA. CONST. of 1885, art. IX, § 10.

34. *Nohrr*, 247 So. 2d at 309.

purpose test evolved for these situations.³⁵ The *Nohrr* court determined that the addition of specific exceptions in the Florida Constitution of 1968 was not meant to exclude all other types of projects.³⁶ Rather, the financing of projects such as airports and ports "was recognized by the Constitution itself as not constituting the lending or use of public credit."³⁷ The court ultimately held that the bond issue was constitutional under article VII, section 10, finding that:

Neither the full faith and credit nor the taxing power of the State of Florida or of any political subdivision thereof is pledged to the payment of the principal of, or the interest on, these revenue bonds. The purchasers of the revenue bonds may not look to any legal or moral obligation on the part of the state, county, or authority to pay any portion of the bonds.³⁸

The principal distinction between the *Nohrr* and *Daytona Beach* cases, and *Poe*, is the source of the funds used to pay the principal and interest on the bonds. In *Poe*, the court in one short sentence rejected "Poe's contention that even when a project serves a paramount public purpose that only bonds which are to be repaid from revenues derived from the project itself may be validated if a private entity also derives some benefit from the project."³⁹ In *Nohrr* and *Daytona Beach*, on the other hand, the bonds were to be repaid from revenues derived from their respective projects.⁴⁰

The cases cited by the *Poe* court in rejecting the argument that the bonds should be repaid from the project's revenues bore little resemblance to the matter before the court. In *State v. Miami*, the purpose of the challenged bond issue was the construction of a convention center and garage.⁴¹ The challenge arose out of the fact that nearly ten years after the bonds were sold, the city entered into development agreements, which provided certain benefits to the University of Miami and a developer in exchange for an agreement to enter into long-term leases with the city.⁴² The means of repaying the

35. *Id.*

36. *Id.* at 308.

37. *Id.* (discussing FLA. CONST. art. VII, § 10).

38. *Id.* at 309.

39. *Poe v. Hillsborough County*, 695 So. 2d 672, 679 (Fla. 1997) (citing *State v. City of Miami*, 379 So. 2d 651 (Fla. 1980); *State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d 631 (Fla. 1980); *Panama City v. State*, 93 So. 2d 608 (Fla. 1957)).

40. See *Nohrr*, 247 So. 2d at 307 ("All expenses are required to be borne by the educational institution involved and no other source of payment, which might otherwise be available for the public generally, is to be used in any manner whatsoever in connection with the project."); *State v. Daytona Beach Racing & Recreational Dev. Facilities Dist.*, 89 So. 2d 34, 35 (Fla. 1956) (The bonds were "payable solely from revenues derived from the facility").

41. *State v. Miami*, 379 So. 2d 651, 652 (Fla. 1980).

42. *Id.* at 652.

bonds was not directly addressed.⁴³ However, the court determined that the convention center had been contemplated long before any agreement with the private entities had occurred, and it was “clear that the City’s dominant interest had continually been the construction of the convention center-garage, and the lease of property by the City is only incidental to the paramount public purpose.”⁴⁴ The same cannot be said of *Poe*, where the complaint to validate the bond issues was filed less than three months after the agreement with the team owner.⁴⁵

The second case in the *Poe* court’s string cite offered little more justification for the short shrift given to Mr. Poe’s source of repayment argument.⁴⁶ In *State v. Sunrise Lakes Phase II Special Recreation District*, the special recreation district sought the validation of bonds for the purpose of purchasing property from a condominium association and developing recreational facilities thereon.⁴⁷ The challengers asserted that a public purpose was lacking because of the proximity of the facilities to the condominium complex.⁴⁸ The court noted that the purpose of a recreational district was to provide and improve recreational facilities within a limited geographical area and that it was inevitable that any chosen property would be more convenient to some than others.⁴⁹ The court affirmed the bond validation and the trial court’s finding of public purpose stating that the “key is the availability of the facilities to the general public. Without that availability, there is no public purpose.”⁵⁰

Sunrise Lakes, unlike *Poe*, clearly demonstrates the nature of an incidental private benefit. Regardless of the chosen location for the development of recreational facilities, some members of the community will benefit more than others; it cannot be avoided. However, unlike the football stadium in *Poe*, all members of the public will have equal rights to use and enjoy the facility. It is much the same as if a municipality purchases land from a private individual for use as a public park. Before the sale, the landowner was free to use and enjoy the land. After the sale, the landowner is free to use and enjoy the land along with the other members of the public. Other than to illus-

43. See *id.* The convention center bonds “were secured by a pledge of the net revenues derived by the City from or in connection with the convention center-garage and other revenues of the City exclusive of ad valorem tax revenues.” *Id.* at 652. The series of bond issues contemplated in *Poe* were secured exclusively by tax revenues. *Poe*, 695 So. 2d at 675.

44. *Miami*, 379 So. 2d at 653.

45. *Poe*, 695 So. 2d at 675.

46. *State v. Sunrise Lakes Phase II Special Recreation Dist.*, 383 So. 2d 631 (Fla. 1980).

47. *Id.* at 632.

48. *Id.* at 633.

49. *Id.*

50. *Id.*

trate the wide range of private benefits deemed incidental, it is hard to see the relevance of this kind of case to *Poe*.

State v. Panama City, the final case cited by the court to counter the assertion that bonds must be paid from the financed project's revenues, serves as another illustration of a purely incidental private benefit.⁵¹ The challengers to the bond validation in that case claimed that the underlying project had lost its public purpose because the city intended to construct retail shops and lease them to private entities as part of the development of a city marina.⁵² The rent revenues from these shops were estimated to account for 20% of the total revenues derived from the project, and the shops would occupy only 1.22% of the total project area.⁵³ While the opinion briefly discussed the source of payment on the bonds in question, the court focused on the incidental nature of the private benefit.⁵⁴ The court stated:

[F]acilities of the kind contemplated are a necessary adjunct to the successful operation of the main enterprise, namely the marina. This being true, it follows that such business is at least in that respect incidental to the operation of the marina. It is not the principal purpose of the undertaking.⁵⁵

The "main enterprise" of the project, the marina, was not to be put to any private use. Had the marina been constructed and put to substantial use by a private entity, the court may well have affirmed the trial court's refusal to validate the bonds.⁵⁶ This, however, was not the case. The *Panama City* court never spoke directly to the issue of whether tax revenues may be used to secure revenue bonds where a private entity substantially benefited from the main project funded by the bonds.

As the above discussion illustrates, none of the cases cited by the Florida Supreme Court in *Poe* directly address the issue of whether article VII, section 10 requires that a bond be repaid solely from revenues derived from the financed project. The fact of the matter is that the Florida Constitution states that "revenue bonds are payable

51. *Panama City v. State*, 93 So. 2d 608 (Fla. 1957).

52. *Id.* at 612.

53. *Id.* at 611.

54. *See id.* at 610 ("[S]aid bonds, both principal and interest, shall be retired solely and exclusively from funds derived from the net revenues of the revenue producing facilities of the project and from the proceeds of excise taxes . . . and from license taxes and franchise taxes.").

55. *Id.* at 614.

56. *See State v. Jacksonville Port Auth.*, 204 So. 2d 881, 884-85 (Fla. 1967). Citing to *Panama City*, the court reversed a decree validating bonds for the purpose of constructing port facilities which were to be leased to a private entity and held that "the only public purpose to be served by this project is the promotion of the Port and the general welfare of the area served by increasing payrolls, providing employment, etc., which this Court has said is not a public purpose as contemplated by our decisions and the Constitution." *Id.*

solely from revenue derived from the sale, operation or leasing of the projects.”⁵⁷ Over time, the Florida courts have judicially written this requirement out of the constitution rather than allowing the citizens of Florida the opportunity to decide the issue by vote as provided by Article XI, Section 5 of the Florida Constitution.⁵⁸

C. The Bounds of Paramount Public Purpose

The dictionary defines “paramount” as an adjective describing something that is “chief in importance.”⁵⁹ In the context of a bond issue, the public purpose is to be measured relative to any other purposes that the contemplated project might have.⁶⁰ This, however, falls well short of establishing a bright line test for determining whether a bond issue is valid.

Clearly, as in the case of *Poe*, a bond issue may provide enormous benefits to a private entity and still be deemed to serve a paramount public purpose. The problem that exists is that trying to compare the benefits to the public with the benefits to the private entity is like trying to compare apples with oranges. The benefits to the community are speculative whereas the benefits to the private entity can be clearly measured. The owner of the Buccaneers gained a new stadium and, consequently, new sources of revenue without any risk to his own capital. The local government on the other hand must rely on the continued popularity of the sport, the continued viability of the team, and the projected positive impact on the local economy, none of which come with any guarantees. Consequently, the paramount purpose of the project may vary depending on whether one looks at it from the perspective of the owner or that of the community. To the owner, the “chief importance” of the project is increased revenue for the team; for the community, the “chief importance” is economic growth.

So, the question becomes whether the determination of paramount public purpose rests solely on whether the public receives a larger benefit than the private entity. The answer is not clear from a reading of *Poe* and the cases that have followed.⁶¹ Recently, in *State v. JEA*, the supreme court reaffirmed the position that “an incidental

57. FLA. CONST. art. VII, § 10(c).

58. FLA. CONST. art. XI, § 5(a).

59. THE AMERICAN COLLEGE DICTIONARY 879 (C.L. Barnhart & Jess Stein eds., Random House 1966).

60. *State v. Panama City Beach*, 529 So. 2d 250, 253 (Fla. 1988).

61. See, e.g., *State v. Osceola County*, 752 So. 2d 530, 539 (Fla. 1999):

[T]he convention center in this case serves a paramount public purpose. As the trial court found, the convention center would, among other things, promote gainful employment, promote outside business interests and tourism, and provide a forum for educational, recreational and entertainment activities. Such interests have been found to serve a public purpose.

private benefit is not sufficient to negate the public character of a project."⁶² However, the court went further than it did in *Poe* and commented that a bond issue could be invalidated if the benefit to a private party represented the paramount purpose of the project.⁶³ Quoting from *Orange County Industrial Development Authority v. State*, a case not addressed in *Poe*, the court stated:

Running throughout this Court's decisions on paramount public purpose is a consistent theme. It is that there is required a paramount public purpose with only an incidental private benefit. If there is only an incidental benefit to a private party, then the bonds will be validated since the private benefits "*are not so substantial as to tarnish the public character*" of the project.⁶⁴

Thus, it appears that there are limits to the amount of benefits that may inure to a private entity from a project financed by local governments. But again, determining whether the public character of a project has been *tarnished* by a substantial private benefit is no easier than finding the line between paramount public purpose and predominately private purpose as illustrated by the *Poe* case.

In *Orange County*, the Florida Supreme Court affirmed the trial court's refusal to validate a bond issue intended to finance the construction of a local television station.⁶⁵ The supreme court found the public purpose of the project was not paramount.⁶⁶ As in *Poe*, the project to be financed did not fit within the constitutionally-prescribed exceptions to the rule barring an arm of the state from lending its taxing power or credit for the benefit of a private entity.⁶⁷ Accordingly, the court looked for a paramount public purpose. The court concluded that there would "be no benefit to the public other than the improved local news coverage which might produce a more informed citizenry in the central Florida area, a minimal increase in employment, limited economic prosperity to the community, and an alleged advancement of the general welfare of the people."⁶⁸ Noting that issuance of the bonds would save the station owners approximately \$300,000 per year over the life of the bonds, the court held that a "broad, general public purpose" would not overcome the fact that the project served a primarily private purpose and affirmed the invalidation of the bonds.⁶⁹

62. 789 So. 2d 268, 272 (Fla. 2001).

63. *Id.* at 273.

64. *Id.* at 272 (quoting *Orange County Indus. Dev. Auth. v. State*, 427 So. 2d 174, 179 (Fla. 1983) (emphasis added)).

65. *Orange County*, 427 So. 2d at 179.

66. *Id.*

67. *Id.* at 178-79.

68. *Id.* at 179.

69. *Id.*

It is interesting that the *Poe* court chose not to mention the *Orange County* case. In a sense, the two cases define the ditches as they relate to the constitutionality of bond issues conferring benefits upon private entities. One case illustrates a paramount public purpose and one does not. The apparent distinction between the two cases, if one exists, is the size of the economic benefit that would eventually flow to the affected communities relative to the benefit flowing to the private entity. In *Poe*, the local government produced a witness that testified that keeping the Buccaneers in Tampa could contribute more than \$400 million to the local economy.⁷⁰ In *Orange County*, on the other hand, the positive economic impact was perceived by the court to be quite minimal.⁷¹

Looking at these two cases together leads one to the conclusion that the bounds of the public purpose doctrine in this context are left to the discretion of the courts. As the court stated in *Orange County*, “[e]very new business, manufacturing plant, or industrial plant which may be established in a municipality will be of some benefit to the municipality.”⁷² Consequently, the lack of a clear definition of “paramount public purpose” imbues the courts with a significant amount of policymaking power. Hence, the popular sentiment behind attracting or keeping a professional sports franchise may serve to make constitutional an otherwise questionable bond issue.⁷³

III. AD VALOREM TAX EXEMPTIONS FOR PRIVATE ENDEAVORS SERVING A PUBLIC PURPOSE

Interestingly, what may be defined under Florida law as a public purpose in the bond validation context may not be a public purpose in the context of ad valorem tax exemptions.⁷⁴ Article VII, Section 3 of the Florida Constitution provides that “[a]ll property owned by a municipality and used exclusively by it for municipal or *public purposes* shall be exempt from taxation.”⁷⁵ A quick reading would then suggest that property determined to serve a public purpose in the bond validation context would consequently be exempt from ad valorem taxation under the constitution. Prior to 1968, this was generally the case.⁷⁶ Under the Florida Constitution of 1885, a leasehold held by a private entity was subject to taxation unless it was “used exclusively for religious, scientific, *municipal*, educational, literary or

70. *Poe v. Hillsborough County*, 695 So. 2d 672, 678 (Fla. 1997).

71. *Orange County*, 427 So. 2d at 179.

72. *Id.* (quoting *State v. Town of North Miami*, 59 So. 2d 779, 784 (Fla. 1952)).

73. *Poe*, 695 So. 2d at 679.

74. *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 241 (Fla. 2001) (*Sebring IV*).

75. FLA. CONST. art. VII, § 3(a) (emphasis added).

76. *Sebring IV*, 783 So. 2d at 245-46.

charitable purposes.”⁷⁷ Municipal purposes were broadly defined.⁷⁸ In *Daytona Beach Racing and Recreational Facilities District v. Paul*, for example, the court quashed the lower court’s determination that the district was subject to ad valorem taxation because the Daytona Motor Speedway was “in reality a private venture and not a public purpose.”⁷⁹ Chiding the lower court, the supreme court remarked:

It would be a matter of great inconsistency, if not bad faith, after declaring the Speedway facility a public or municipal purpose in the bond validation case in the broadest and most sweeping terms, to hold the decision below in the instant case does not conflict with the bond validation decision and that the tax exemption granted by the Legislature in favor of the lands and facilities utilized in the operation of the Speedway is no longer applicable because they have somehow lost their recognized attributes as public or municipal purpose lands or facilities.⁸⁰

In order to remedy the resultant tax inequities, the law in this regard was changed with the adoption of the Florida Constitution of 1968 to limit exemptions to situations where the property in question was “owned by a municipality and used exclusively by it for municipal or public purposes.”⁸¹

The Florida courts were slow to give full effect to the constitutional changes.⁸² A clear judicial statement of what made the 1968 provision different from the 1885 provision was not made until 1975 in *Williams v. Jones*.⁸³ *Williams* announced the “governmental-governmental” standard for determining whether a property was exempt from ad valorem taxation on the basis of its municipal or public use.⁸⁴ Rejecting a claim by business owners that they were fulfilling a public purpose and therefore exempt from ad valorem taxation on leaseholds obtained from the Santa Rosa Island Authority, the court stated:

The operation of the commercial establishments represented by appellants’ cases is purely proprietary and for profit. They are not governmental functions. If such a commercial establishment operated for profit on Panama City Beach, Miami Beach, Daytona Beach, or St. Petersburg Beach is not exempt from tax, then why should such an establishment operated for profit on Santa Rosa Is-

77. FLA. CONST. of 1885, art. XVI, § 16 (emphasis added).

78. *Sebring IV*, 783 So. 2d at 245-46.

79. *Daytona Beach Racing & Recreational Facilities Dist. v. Paul*, 179 So. 2d 349, 352 (Fla. 1965).

80. *Id.* at 353.

81. *Sebring IV*, 783 So. 2d at 245; see also FLA. CONST. art. VII, § 3(a).

82. *Sebring IV*, 783 So. 2d at 246.

83. *Id.* (citing *Williams v. Jones*, 326 So.2d 425 (Fla. 1975)).

84. *Williams*, 326 So. 2d at 433.

land Beach be exempt?⁸⁵

The law has since evolved to the point where a private entity's use of property owned by a governmental unit may be classified in one of three categories: (1) private, (2) governmental-proprietary, or (3) governmental-governmental.⁸⁶ Of the three uses, only governmental-governmental may exempt a property from ad valorem taxation, unless of course the predominant use falls into one of the constitutionally defined exceptions: educational, literary, scientific, religious, or charitable.⁸⁷ The distinction between a governmental-proprietary and a governmental-governmental function rests primarily on whether the function is one traditionally performed by a governmental unit.⁸⁸ Proprietary functions are typically for-profit activities which also "promote the comfort, convenience, safety and happiness of citizens, whereas government functions concern the administration of some phase of government."⁸⁹

A. Confusing Bond Validation Public Purpose with Ad Valorem Public Purpose

In *Sebring Airport Authority v. McIntyre (Sebring IV)*, the Florida Supreme Court lamented the use of the phrase "public purpose" in the context of both bond validation and ad valorem taxation.⁹⁰ Parenthetically, the court noted that:

[T]he time may be ripe to adopt a new phraseology for use in bond validation cases—such as "in the public interest" and "in the paramount public interest"—to avoid confusion between an article VII, section 10 analysis in bond validation cases, and an article VII, section 3(a) analysis in tax exemption cases.⁹¹

This may or may not be true. A strong argument exists that the time may be ripe to conclude that paramount public purpose has no place in the constitutional analysis of bond validation cases under article VII, section 10. The appellants' argument in *Sebring IV* illustrates the problems that will continue to arise under the nebulous doctrine of public purpose that exists today.

85. *Id.*

86. *See Sebring IV*, 783 So. 2d at 242.

87. *See id.* at 252. "Legislatively deeming a governmental-proprietary purpose to be a 'governmental-governmental' purpose does not change its true nature and does not result in the constitutional awarding of a tax exemption where, absent the legislation, there clearly could be no exemption." *Id.* (quoting David M. Hudson, *Governmental Immunity and Taxation in Florida*, 9 U. FLA. J.L. & PUB. POL'Y 221, 250 (1998)).

88. *Id.* at 242.

89. *Id.* at 242 n.2 (quoting *Sebring Airport Auth. v. McIntyre*, 642 So. 2d 1072, 1074 n.1 (1994) (*Sebring II*)) (citing BLACK'S LAW DICTIONARY 1219 (6th ed. 1990)).

90. *Id.* at 250-51.

91. *Id.* at 253 n.19 (emphasis omitted).

The court in *Sebring IV* upheld the lower court's determination that a portion of section 196.012(6), *Florida Statutes*, amended in 1994, was unconstitutional.⁹² The amended statute defined activities previously held to be governmental-proprietary functions, such as the operation of convention centers and stadiums, as "serving 'a governmental, municipal, or public purpose or function'" and were therefore exempt from ad valorem taxation.⁹³ The supreme court agreed with the lower court in that "the legislature's redefinition of the term . . . must fail because the redefined term conflicts with the 'normal and ordinary meaning' of the phrase 'governmental, municipal or public purpose or function.'"⁹⁴

The appellants in *Sebring IV* sought an ad valorem tax exemption for a leasehold obtained from the Sebring Airport Authority for the purposes of auto racing and related commercial activities.⁹⁵ The appellants had failed once before in *Sebring II* to obtain an exemption under the previous incarnation of section 196.012(6) that provided an exemption only when the lessee "is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds."⁹⁶ The main thrust of the court's brief ruling in *Sebring II* was that operating a racetrack was clearly a governmental-proprietary function and did not fit within the old section 196.012(6)'s definition of a public purpose.⁹⁷ The appellants' reliance on *Poe v. Hillsborough County* in arguing the constitutionality of the amended section 196.012(6) made the court's job much more difficult in *Sebring IV*.⁹⁸

In *Sebring IV*, the appellants argued that section 196.012's amended statutory definition of activities mirrored the types of activities consistently found to serve a public purpose in bond validation cases.⁹⁹ Taking their cue from *Poe*, the appellants insisted that the court should recognize that the constitution is a "fluid document" and defer to reasonable legislative definitions of public purpose which reflect modern attitudes and common usage.¹⁰⁰ The court would have none of it. It answered that the language of the constitution, not common usage, was "the touchstone against which the Leg-

92. *Id.* at 253.

93. *Id.* at 240.

94. *Id.* at 252 (quoting *Sebring Airport Auth. v. McIntyre*, 718 So. 2d 296, 298 (Fla. 2d DCA 1998)).

95. *Id.* at 241.

96. *Sebring II*, 642 So. 2d 1072, 1073 (Fla. 1994).

97. *Id.* at 1073-74.

98. *Sebring IV*, 783 So. 2d at 248-49.

99. *Id.* at 241.

100. *Id.* at 243.

islature's enactments are to be judicially measured," and to hold otherwise would result in the "tail wagging the dog."¹⁰¹ These comments stand in stark contrast to the validation of revenue bonds context where public purpose has no set definition and is only limited to the extent that private benefits are "not so substantial as to tarnish the public character" of the financed project.¹⁰²

The *Sebring IV* court explained, however, that bond validation cases are not analogous to ad valorem exemption cases.¹⁰³ It cited two primary distinctions. First, two different constitutional provisions are implicated: article VII, section 10 in the bond validation context; and article VII, section 3 in the exemption cases.¹⁰⁴ Second, the issuance of revenue bonds and the provision of ad valorem tax exemptions have distinct fiscal implications.¹⁰⁵ However, the soundness of these distinctions is open to debate.

Regarding the constitutional distinction, the *Sebring IV* court noted that the "public purpose" analysis is constitutionally derived in the tax exemption context; however, as applied to the bond validation context, in contrast, the phrase 'public purpose' does not appear in the governing constitutional provision."¹⁰⁶ This statement is problematic. "Public purpose" is a general concept. Yet, when used in article VII, section 3(a), the court allows very little room for legislative discretion in determining what constitutes a public purpose; a public purpose must involve the "administration of some phase of government."¹⁰⁷ On the other hand, when judicially inserted into article VII, section 10, public purpose authorizes the issuance of revenue bonds for projects of every size and scope notwithstanding the fact that the plain language of article VII, section 10 addresses only airports, ports, manufacturing facilities, and industrial facilities.¹⁰⁸ Without addressing the apparently backward construction of these provisions, the court in *Sebring IV* simply concluded that "public purpose" meant two different things in the different contexts and that it was "perhaps both confusing and unfortunate, then, that the same term—'public purpose'—has traditionally been used in both of these analytical contexts."¹⁰⁹ Removal of "public purpose" from the bond validation analysis would go a long way toward resolving this confusion.

101. *Id.* at 244.

102. *State v. JEA*, 789 So. 2d 268, 272 (Fla. 2001) (citations omitted).

103. *Sebring IV*, 783 So. 2d at 250.

104. *Id.*

105. *Id.*

106. *Id.* at 250-51 n.15.

107. *Id.* at 242 n.2 (quoting *Sebring II*, 642 So. 2d 1072, 1074 n.1 (1994)) (citing BLACK'S LAW DICTIONARY 1219 (6th ed. 1990)).

108. *See* FLA. CONST. art. VII, § 10(c); *Nohrr v. Brevard County Educ. Facilities Auth.*, 247 So. 2d 304 (Fla. 1971).

109. *Sebring IV*, 783 So. 2d at 250-51.

The second distinction offered by the court in *Sebring IV*, fiscal impact, does not compel the conclusion that a private entity should be allowed to benefit substantially in the bond validation context but not in the ad valorem exemption context. The court emphasized fairness in allocating the property tax burden among all properties put to private use.¹¹⁰ The court remarked that "in bond validation cases, a shift in the ad valorem tax burden to other taxpayers is not anticipated. In tax exemption cases, in contrast, any newly-created tax exemption necessarily involves a direct shift in tax burden from the exempt property to other nonexempt properties."¹¹¹

One cannot quarrel with the argument that all property put to private use should bear its fair share of the property tax burden. However, it is difficult to see how encouraging development and economic growth through ad valorem tax exemptions is less fair to the public than taxing it to repay revenue bonds supporting projects substantially benefiting private entities. In either case, the overall tax burden on the public increases and the capital position of the private entity improves.

Thus, the *Sebring IV* court concluded that the Florida Constitution required two distinct analyses in the context of bond validation cases and ad valorem taxation cases.¹¹² However, it closed its opinion with comments that, with some editing, would be particularly appropriate should it decide to rethink the public purpose doctrine as applied in bond validation cases:

We certainly understand that there is enormous competition to secure professional athletic teams and other forms of entertainment and economic development which benefit Florida citizens. We also recognize the tremendous economic forces and implications that become involved in this type of issue and the good faith legislative attempts to balance these concerns. However, *as long as the people of Florida maintain the constitution in the form we are required to apply today, neither we nor the Legislature may expand the permissible exemptions based on this type of argument.* The people of Florida have spoken in the organic law and we honor that voice. It is not for this Court or the Legislature to grant ad valorem taxation exemptions not provided for in the present constitutional provisions¹¹³

110. *Id.* at 247 ("It is fundamentally unfair for the Legislature to statutorily manipulate assessment standards and criteria to favor certain taxpayers over others.") (quoting *Interlachen Lakes Estates v. Snyder*, 304 So. 2d 433 (Fla. 1974)).

111. *Id.* at 250.

112. *Id.* at 251.

113. *Id.* at 253 (emphasis added).

IV. EMINENT DOMAIN AND THE PUBLIC PURPOSE REQUIREMENT

A third variation of the “public purpose” standard appears in the context of eminent domain proceedings. Article X, Section 6 of the Florida Constitution provides that “[n]o private property shall be taken except for a public purpose and with full compensation therefor paid.”¹¹⁴ To a lesser extent than in bond validation and ad valorem tax exemption cases, what constitutes a “public purpose” in the eminent domain context is not always clear.¹¹⁵

However, the courts have made two things clear. Public purpose is not synonymous with public use, and the validity of a public purpose is one for judicial determination.¹¹⁶ The Florida Supreme Court has held that the “term ‘public purpose’ does not mean simply that the land is used for a specific public function, i.e. a road or other right of way. Rather, the concept of public purpose must be read more broadly to include projects which benefit the state in a tangible, foreseeable way.”¹¹⁷ For example, the state may condemn more property than is necessary to accommodate a contemplated project, in order to avoid the payment of statutorily mandated business damages, when doing so would result in decreased acquisition costs.¹¹⁸ Whether the state has any plans for the unused portion of the property is irrelevant.¹¹⁹

Hence a valid “public purpose” does not necessarily entail putting the condemned property to public use. However, the concept is limited in that “eminent domain cannot be employed to take private property for a predominantly *private* use.”¹²⁰ In this context, the Florida Supreme Court has held:

The standard for determining the question of “public purpose” is the same under article VII, section 10 and article X, section 6. If a project serves a public purpose sufficient to allow the expenditure of public funds and the sale of bonds under article VII, section 10, then the use of eminent domain in furtherance of the project is also proper.¹²¹

Unlike bond validation cases, however, the analysis does not end with a court’s finding of public purpose. The condemning authority has the burden of showing that the taking is reasonably, but not ab-

114. FLA. CONST. art. X, § 6(a) (emphasis added).

115. See *Sebring IV*, 783 So. 2d at 251 n.16 (noting disagreement as to whether public purpose is synonymous with public use).

116. *Dep’t of Transp. v. Fortune Fed. Sav. & Loan Ass’n*, 532 So. 2d 1267, 1269-70 (Fla. 1988).

117. *Id.* at 1270.

118. *Id.*

119. *Id.*

120. *Baycol, Inc. v. Downtown Dev. Auth.*, 315 So. 2d 451, 455 (Fla. 1975).

121. *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875, 885 (Fla. 1980).

solutely, necessary to serve the public purpose.¹²² Even then, the landowner may prevail by showing that the authority acted in bad faith or abused its discretion.¹²³

A. Reasonable Necessity and the Requirement of Good Faith

The judicial review of the necessity to condemn property is justified in order to guard against the "tunnel vision" of administrative agencies tending to obscure alternative, less burdensome, courses of action.¹²⁴ Nevertheless, the condemning authority's quantum of proof in showing necessity is a modest one.¹²⁵ It must produce some evidence that the taking was necessary.¹²⁶ This is accomplished by showing that the condemning authority reached its decision only after considering "relevant factors, such as alternative sites, costs, long-range area planning, environmental and safety considerations."¹²⁷ Upon such a showing, the burden shifts to the landowner to show that the condemnor acted in bad faith or abused its discretion in some way.¹²⁸ However, good faith on the part of the condemning authority does not require it to investigate every possible alternative suggested by affected landowners.¹²⁹

In showing reasonable necessity, the condemning authority is not required to present evidence pinpointing the need for the condemned property.¹³⁰ In *City of Jacksonville v. Griffin*, the Florida Supreme Court relaxed the burden placed on a condemning authority.¹³¹ A previous ruling by the court held that a condemning authority could not obtain an order of taking without presenting evidence pinpointing its need for the property.¹³² The *Griffin* court receded from that position and found that it was not necessary for a condemning authority to have fully developed its plans for the condemned property before instituting eminent domain proceedings.¹³³ In doing so, *Griffin* solved the problem of the "Why not my neighbor?" argument.¹³⁴ That

122. *State v. Barbara's Creative Jewelry, Inc.*, 728 So. 2d 240, 242 (Fla. 4th DCA 1998).

123. *Id.*

124. *Chipola Nurseries, Inc. v. Dep't of Transp.*, 294 So. 2d 357, 360 (Fla. 1st DCA 1974).

125. *City of Cocoa v. Holland Properties*, 625 So. 2d 17 (Fla. 5th DCA 1993).

126. *Id.* at 19.

127. *Id.* (quoting *Broward County v. Ellington*, 622 So. 2d 1029 (Fla. 4th DCA 1993)).

128. *Id.*; *Cordones v. Brevard County*, 781 So. 2d 519, 522 (Fla. 5th DCA 2001).

129. *Chipola Nurseries*, 294 So. 2d at 359.

130. *City of Jacksonville v. Griffin*, 346 So. 2d 988, 990 (Fla. 1977).

131. *Id.*

132. *See Ball v. City of Tallahassee*, 281 So. 2d 333, 337 (Fla. 1973) ("The city must present evidence pinpointing the need for the particular property . . . sought to be condemned. No such evidence being submitted by the city, its petition for eminent domain . . . cannot be approved.").

133. *Griffin*, 346 So. 2d at 991.

134. *Id.*

argument asserted that the fact that the condemning authority had no immediate plans for similarly situated properties in the area demonstrated an abuse of discretion.¹³⁵ The court wisely concluded that a condemning authority “must start somewhere” and that to hold otherwise would frustrate large redevelopment projects in that each affected landowner would be free to challenge the sequence of the condemnation proceedings.¹³⁶

B. Takings for Private Use

As in the bond validation and the ad valorem tax exemption cases, a literal interpretation of the pertinent constitutional provision fails to tell the whole story. Article X, Section 6 of the Florida Constitution states that “[n]o private property shall be taken except for a public purpose.”¹³⁷ The layperson would likely believe that land taken from her would be put to some sort of public use, for example a road, park, or government building. However, as noted above, “public purpose” has not been held to be synonymous with “public use.”¹³⁸ Rather, as long as the taking fulfills a proper public purpose, the ultimate disposition of the property into private hands does not destroy the validity of the taking.¹³⁹ Under this rationale, development agreements between private developers and municipalities have flourished. Citing statutory definitions of blight elimination as the overarching public purpose, municipalities exercise their statutory eminent domain powers to condemn private property and subsequently convey it to the private developers in furtherance of redevelopment plans.¹⁴⁰ Fortunately, some degree of protection is afforded to landowners in the requirement to show the necessity of the taking in eliminating the perceived blight.

In one such case, *Rukab v. City of Jacksonville Beach*, the appellate court reversed an order of taking and remanded for further proceedings requiring the city to demonstrate “public purpose and necessity.”¹⁴¹ Under Florida’s Community Redevelopment Act, local redevelopment agencies are empowered to exercise eminent domain to acquire blighted properties.¹⁴² The appellants had purchased land in an area previously designated as blighted with the intention of re-

135. *Id.* at 990.

136. *Id.* at 991.

137. FLA. CONST. art. X, § 6(a).

138. *Dep’t of Transp. v. Fortune Fed. Sav. & Loan Ass’n*, 532 So. 2d 1267, 1269-70 (Fla. 1988).

139. *Id.* at 1270 n.* (“However, future sale of the property to a private buyer is not prohibited by either this or the *Baycol* decision.”).

140. *See Rukab v. City of Jacksonville Beach*, 811 So. 2d 727, 730 (Fla. 1st DCA 2002).

141. *Id.* at 733.

142. FLA. STAT. § 163.375 (2002).

zoning the property and developing it.¹⁴³ The city denied the appellant's rezoning request and instituted eminent domain proceedings pursuant to a redevelopment agreement reached with a private developer.¹⁴⁴

The trial court determined that the only issue to be resolved was that of just compensation. It refused to review the blighted status of the area because that status had recently been affirmed in another eminent domain case and the court took judicial notice thereof.¹⁴⁵ The appellants argued that they were entitled to de novo review of that status and that the city must demonstrate public purpose and necessity as it related to their property.¹⁴⁶

The appellate court agreed with the appellants. It found that no judicial doctrine or precedent worked to bind the appellants to the determinations of public use and necessity in a case to which they were not parties.¹⁴⁷ The Community Redevelopment Act did not provide a procedure for challenging the designation of the area as blighted. As such, the appellants' first opportunity to challenge the blight status arose in the eminent domain proceedings.¹⁴⁸ The appellate court concluded that "even if there were other opportunities for challenging the designation, a property owner must still be afforded the opportunity for a full hearing in the eminent domain action. During this action, the City must meet the burden of showing public purpose and necessity."¹⁴⁹

C. Taking More Than is Necessary

The exercise of eminent domain is justified by the "public nature of the need and necessity involved."¹⁵⁰ However, this need and necessity also serves to limit the scope of a taking in any given case. While a condemning authority is not required to have developed immediate plans from the property sought to be taken, the amount of property taken must not exceed that which is necessary to meet the demonstrated need.¹⁵¹

In the seminal case of *Canal Authority v. Miller*, the Florida Supreme Court held that the Canal Authority had failed to show the necessity of a fee simple taking versus the broad easement which it had already gained for the construction of the ill-fated Cross-Florida

143. *Rukab*, 811 So. 2d at 729.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 732-33.

148. *Id.* at 733.

149. *Id.*

150. *Baycol, Inc. v. Downtown Dev. Auth.*, 315 So. 2d 451, 455 (Fla. 1975).

151. *Canal Auth. v. Miller*, 243 So. 2d 131, 133 (Fla. 1970).

Barge Canal.¹⁵² The trial court and lower appellate court agreed that the authority, in seeking a supplemental order for a fee simple taking, had simply restated the justifications it had relied upon in obtaining the easement order.¹⁵³ Much of the testimony in the trial court revolved around a letter from the Army Corps of Engineers, to the authority, stating that obtaining fee simple title was necessary for the construction of the canal.¹⁵⁴ However, the trial court struck the testimony of a key witness when the Army refused to disclose a file from which the witness had based his conclusion that obtaining fee simple title was necessary.¹⁵⁵ Summarizing basic tenets of eminent domain law, the Florida Supreme Court stated:

It is agreed that unless a condemning authority acts illegally, in bad faith, or abuses its discretion, its selection of land for condemnation will not be overruled by a court; a court is not authorized to substitute its judgment for that of a governmental body acting within the scope of its lawful authority. This includes both the amount and the location of land to be condemned. It is equally well recognized, however, that an acquiring authority will not be permitted to take a greater quantity of property, or greater interest or estate therein, than is necessary to serve the particular public use for which the property is being acquired.

In order to insure the property rights of the citizens of the state against abuse of the condemning authority's power it is imperative that the *necessity* for the exercise of the eminent domain power be ascertained and established. This is ultimately a judicial question to be decided in a court of competent jurisdiction.¹⁵⁶

While *Canal Authority* and *Griffin* are seemingly at odds with one another, the *Griffin* court emphasized that the two cases were in fact in harmony.¹⁵⁷ Each case demands a reasonable showing of necessity on the part of the condemning authority.¹⁵⁸ The Canal Authority failed to show the development of any greater need beyond that which justified the order granting the original easement.¹⁵⁹ Thus, the quantity of property or the extent of a property interest taken for an ostensibly public purpose is limited by the ability of the condemning

152. *Id.* at 135. The canal was intended to provide a quick route between the Atlantic Ocean and the Gulf of Mexico. Work began in 1963 and was abandoned in 1973 largely because of environmental concerns. Roger Bull, *Failed Barge Canal Project Leads to Cross Florida Greenway*, FLA. TIMES-UNION (Jacksonville), Jan. 19, 2001, at E3, available at http://www.jacksonville.com/tu-online/stories/011901/ent_barge.html (last visited Jan. 25, 2003) (on file with author).

153. *Canal Auth.*, 243 So. 2d at 135.

154. *Id.* at 133.

155. *Id.*

156. *Id.* (citations omitted).

157. *City of Jacksonville v. Griffin*, 346 So. 2d 988, 990 (Fla. 1977).

158. *Id.*

159. *Id.*

authority to show a reasonable necessity for the taking.

V. CONCLUSION

Clearly, the meaning of "public purpose" has become elusive. The problems with capturing its meaning are not unique to Florida. Every jurisdiction in the country has undoubtedly wrestled with the issue in its efforts to promote the welfare and prosperity of its respective state.¹⁶⁰ Clearly, an element of competition exists in trying to attract professional sports franchises and industry to a state. Communities undoubtedly sense that their targets will follow the money to localities offering the greatest financial incentives. This is a legitimate concern. However, popular sentiment and political motives are not the proper forces to apply to the shaping of law rooted in the state's constitution. Perhaps this explains why the application of "public purpose" in the eminent domain context seems to generate the least debate within this state's case law.¹⁶¹ As stated by the court in *Sebring IV*: "[A]s long as the people of Florida maintain the constitution in the form we are required to apply . . . , neither [the courts] nor the Legislature may expand [upon or contract its provisions]. The people of Florida have spoken in the organic law and we must honor that voice."¹⁶²

160. See 56 AM. JUR. 2D *Municipal Corporations, Counties, and Other Political Subdivisions* § 178 (2000) ("A public purpose or use changes with the changing conditions of society. The modern trend is to expand and liberally construe the term 'public use' in considering state and municipal activities sought to be brought within its meaning.").

161. *Fortune*, decided in 1988, represents the most recent serious discussion and analysis of public purpose by the supreme court in the eminent domain context. *Dep't of Transp. v. Fortune Fed. Sav. & Loan Ass'n*, 532 So. 2d 1267 (Fla. 1988).

162. *Sebring Airport Auth. v. McIntyre (Sebring IV)*, 783 So. 2d 238, 253 (Fla. 2001).